

REMARKS

Claims 2-32 and 35-36 remain pending in this application.

The Examiner rejected claims 2, 3, 5, 6, 11-14, 16, 17, 21-25, 28, 29, 35, and 36 under 35 U.S.C. § 103(a) as being unpatentable over *Wu* (previously cited). Applicant respectfully traverses this rejection.

Claim 2 is directed to a method that calls for establishing a communication channel between a first transceiver and a second transceiver in low power mode; determining, at the first transceiver, a training parameter in response to establishing the communication channel in the low power mode; performing training, at the first transceiver, based at least on the training parameter; and providing the training parameter to the second transceiver.

In the previous Response, the Applicants noted in detail the numerous deficiencies in the Examiner's rejection. In the latest Office Action, the Examiner appears to repeat the same rejections. Unfortunately, the Examiner's rejections are grounded in generalities. As such, the Examiner fails to address how the primary reference *Wu* specifically teaches some of the recited features. For example, with respect to the "determining...a training parameter" step of claim 2, the Examiner does not specify what in *Wu* corresponds to the "training parameter;" instead, the Examiner simply asserts that this feature is shown in block 70C of Figure 9 of *Wu*. The Applicants noted in the previous Response that the only thing created in block 70C is a power spectrum density (PSD), and that this PSD is not "provided" to a second transceiver, as called for claim 2. In response, the Examiner again resorts to generalities, without specifying which

training parameter is “determined” in block 70C that is then “provided” to the second transceiver (or, in the case of *Wu*, the remote modem 10).

While *Wu* teaches transmitting TEQ-R, TEQ-C, FEQ-R, FEQ-C signals between the central modem and remote modem, *Wu* does not teach that these signals are used for training by the transmitting modem as well as the receiving modem. Rather, *Wu* teaches the opposite. *Wu* teaches that the TEQ-R and FEQ-R signals, which are transmitted by the central office modem to the remote modem, are used by the remote modem, not the central modem. Similarly, *Wu* teaches that the TEQ-C and FEQ-C signals, which are transmitted by the remote modem to the central office modem, are used by the central office modem, not the remote modem. Thus, *Wu* teaches that each modem uses the signals transmitted by other modem, not its own. Put another way, neither *Wu* nor any of the other cited references teaches performing training based on a training parameter, wherein that training parameter is also provided to the remote station. In contrast, claim 2 calls for the first transceiver to perform training based at least on the training parameter, wherein that training parameter is also provided to the second transceiver. The Examiner has failed to point to any passage from *Wu* with any meaningful level of specificity that shows these claimed features.

For completeness, the Applicants again address the Examiner’s rejections in detail below.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Second, there must be some

suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. That is, there must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. Third, there must be a reasonable expectation of success. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. Federal Circuit has emphasized that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 143 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

In the instant case, the Examiner has not met even a single criteria necessary to establish a *prima facie* case of obviousness. As an initial matter, the Examiner fails to point to any suggestion or motivation in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Rather,

the Examiner uses the language of the claims as a template to argue that the teachings of the references are combinable. As noted, the mere fact that the prior art can be combined or modified does not make the resultant combination obvious. The Examiner has also failed to cite to a reasonable expectation of success. Finally, even if the cited references were properly combinable in the manner argued by the Examiner (and they are not), the pending claims are still allowable because these references, when considered alone or in combination, do not teach all of the claim limitations, as explained below.

In the Office Action, the Examiner argues that the claimed feature of determining a training parameter is disclosed by block 70C of Figure 9 of *Wu*. Block 70C of *Wu* refers to receiving a power spectrum density (PSD) REVERB signal from the remote unit 10 and, based on the PSD REVERB signal, calculates a PSD that the office modem 20 uses for downstream transmission with the remote unit 10. *See* col. 12, lines 21-26; lines 52-55. Because the Examiner asserts that block 70c of *Wu* teaches the claimed feature of “determining a training parameter,” the Examiner thus argues that the calculated “PSD” at block 70C corresponds to the “training parameter” that is determined in claim 2.

Claim 2 also calls for providing the training parameter to the second transceiver. As noted, according to the Examiner, the “training parameter” that is calculated at block 70C is the “PSD.” The Examiner asserts that this PSD value is provided to the remote unit 10 at block 72C of Figure 9 of *Wu*. Contrary to the Examiner’s assertion, the PSD value is not provided to the second transceiver (*e.g.*, the remote modem 10). To the contrary, *Wu* describes that the PSD value calculated by the central service modem 20 at block 70C is the value that the modem 20

itself uses for downstream transmission with the remote modem 10. *See* col. 12, lines 21-26; lines 52-55.

Claim 2 and its dependent claims are thus allowable for at least the reasons presented above. Additionally, the other pending claims, to the extent they call for one or more of the above-noted missing features, are also allowable for these reasons.

It is noted that the Applicants do not suggest that one or more of the claims exclude embodiments in which modems exchange parameters for the purposes training. To the contrary, such scenarios are contemplated to be within the purview of one or more of the claims. The Applicants merely clarify that the cited references at least do not teach the combination of recited features as recited in the claims.

Arguments with respect to other dependent claims have been noted. However, in view of the aforementioned arguments, these arguments are moot and therefore not specifically addressed. To the extent that characterizations of the prior art references or Applicants' claimed subject matter is not specifically addressed, it is to be understood that Applicants do not acquiesce to such characterization.

Reconsideration of the present application is respectfully requested. In light of the arguments presented above, Applicants respectfully assert that all claims are allowable. Accordingly, a Notice of Allowance is respectfully solicited.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Houston, Texas telephone number (713) 934-4064 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

WILLIAMS, MORGAN & AMERSON, P.C.
CUSTOMER NO. 23720

Date: 5/16/05

By: _____



Ruben S. Bains, Reg. No. 46,532
10333 Richmond, Suite 1100
Houston, Texas 77042
(713) 934-7000
(713) 934-7011 (facsimile)
ATTORNEY FOR APPLICANT(S)

IN THE DRAWINGS

No objection to the drawings was indicated by the Examiner. As such, Applicants assume the drawings to be acceptable.